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Ally-ship and Dispute Resolution Practitioners: A Continuum

Benjamin Lowndes

Sharon Press

Mitchell Hamline School of Law, sharon.press@mitchellhamline.edu

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ALLY-SHIP AND DISPUTE RESOLUTION PRACTITIONERS: A CONTINUUM

Benjamin Lowndes[†] and Sharon Press^{††}

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[†] J.D., Hamline University, 2014. The author would like to thank all of his mentors, teachers, and professors who have encouraged him to apply theory to practice, all those who made this timely and important Symposium a success, and Beth Bailey (Executive Director of Community Mediation & Restorative Services, Inc.) for challenging him to continually work for peace and justice. The author especially thanks his co-author Sharon Press for all of her guidance, support, and encouragement as he continues to establish himself in the dispute resolution field.

^{††} J.D., George Washington University, 1986. The author would like to thank Jessica DuBois, Symposium Editor, Sarah Holm, Managing Editor, and the entire Mitchell Hamline Law Review for their work to produce this issue. The author also gratefully acknowledges the Symposium participants for their thoughtful contributions.

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I. INTRODUCTION: HOW WE GOT HERE

In mediation and other alternative dispute resolution (ADR) processes, context matters. For instance, it makes sense that a facilitative mediator would want all sides to share their perspectives and viewpoints on themselves, on the other parties, and ultimately on the conflict itself. This is because the context of a conflict—and those involved in it—provides the raw material to work with when making the crucial pivot from focusing on the past to building a new future. Similarly, when tackling a large topic such as this one, it helps to provide some context so that the reader has something to work with as well. Accordingly, some background information is in order.

A. *Sharon Press*¹

As one of the lead organizers for the 2015 Dispute Resolution Institute's Symposium entitled, *An Intentional Conversation About Public Engagement and Decision-Making: Moving from Dysfunction and Polarization to Dialogue and Understanding*,² I had given a lot of

1. Sharon Press is a Professor of Law at Mitchell Hamline School of Law and Director of the Mitchell Hamline Dispute Resolution Institute. Press's interest in dispute resolution began as an undergraduate at George Washington University while she was studying International Relations and serving as a resident assistant for the residence hall system. While in law school at George Washington University, she worked as a resident director of a residence hall and in a mediation clinic. She also served as an intern for renowned mediator and arbitrator Jonathan Marks at EnDispute. Upon graduation, Press returned to New York and volunteered as a mediator with the Queens Mediation Center and worked as the coordinator of a peer mediation program at Far Rockaway High School through Project SMART. She also worked at the Florida Dispute Resolution Center, first as the associate director and later as the director. At the Florida Dispute Resolution Center, Press was responsible for the development and running of the ADR programs for the Florida state courts. Now a resident of Minnesota, Press is chair of the Minnesota State Bar Association ADR Section, a volunteer mediator with the Ramsey County Dispute Resolution Center, a board member at Community Mediation & Restorative Services, Inc., and is on the Community Dispute Resolution Programs Advisory Council.

2. See DISPUTE RESOL. INST., Symposium, *An Intentional Conversation About Public Engagement and Decision-Making: Moving from Dysfunction and Polarization to*

thought to the kinds of discussion I envisioned (and hoped) would take place at the Symposium. As the Symposium approached, I was particularly troubled by the public discourse during the current pre-election period. The discourse taking place was becoming increasingly dysfunctional. I considered the twenty-four hour news cycle to be a significant contributor to the problem because it increases the demand for sound bites—rather than a demand for in-depth analysis. I expected that the article I would want to write after the Symposium would revolve around this theme.

Each of the theme leaders provided thought-provoking comments. Rashad Turner's comments about being an ally grabbed the attention of my co-author and I in particular. His comments resonated with discussions and thoughts we had contemplated together and individually. Rashad Turner made the significant point that not everyone needs to be a member of Black Lives Matter and join the protests to be an active supporter of the cause. Rather, there is an equally significant role one can play as an ally.

This concept struck a chord with me because it reminded me of one of my initial attractions to this field. I entered law school with the idea that I did not see my career path to be one where I would serve as a traditional advocate. I believed that I could serve justice by providing opportunities, via creation of space and development of skills, for individuals to resolve issues for themselves.

My first work experiences after law school were volunteering at a community mediation program (Queens Mediation Center) and working as the (paid) coordinator for a New York City high school peer mediation program (Project S.M.A.R.T). From there, I moved on to court-connected ADR, right as the movement was scaling up. In many ways, my personal career path mirrored what happened in the development of mediation in the United States.

Mediation, in the modern era, developed out of two different underlying justifications—quantitative-efficiency claims versus qualitative-justice claims³—and therefore branched into two distinct streams.⁴ One stream stemmed from the concern that the

Dialogue and Understanding, MITCHELL HAMLINE SCH. L. (Oct. 23–24, 2015), http://open.mitchellhamline.edu/dri_symposia/2015/.

3. Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-Opted or "The Law of ADR,"* 19 FLA. ST. U. L. REV. 1, 6 (1991).

4. Timothy Hedeem, *The Evolution and Evaluation of Community Mediation: Limited Research Suggests Unlimited Progress*, 22 CONFLICT RESOL. Q. 101, 102 (2004)

courts were unable to handle both the number and the types of cases demanding their attention.⁵ This stream of thought saw the case overload at the courts as a crisis in justice and advocated for mediation as a reformation measure.⁶ The second stream, buoyed by an interest in increasing public participation in a range of social institutions,⁷ sought to further “community empowerment and mobilization.”⁸

Early on, both of these streams began as movements to develop “community justice centers.”⁹ These early community justice centers led to what we now call “community mediation,” which includes “government-sponsored and community-based programs.”¹⁰ In turn, the success of community mediation led to the increased institutionalization of mediation in the courts.¹¹

Importantly, both streams shared a common foundation for the development of mediation—an underlying interest in and connection to justice.¹² Both streams supported community mediation because it “allow[ed] parties to create meaningful justice for themselves as individuals and for broader and socially complex

(discussing the past and future of community mediation).

5. *Id.*

6. *Id.*

7. Menkel-Meadow, *supra* note 3, at 6.

8. *Id.* at 103.

9. See William R. Drake & Michael K. Lewis, *Community Justice Centers—A Lasting Innovation*, DISP. RESOL. F., Dec. 1988, at 3, 3 (providing a historical overview of community justice centers and a summary of the current challenges they face).

10. Hedeem, *supra* note 4, at 105 (quoting DANIEL MCGILLIS, COMMUNITY MEDIATION PROGRAMS: DEVELOPMENTS AND CHALLENGES 8 (1977)). Raymond Shonholtz, former president of the Community Boards Program in San Francisco, stressed the difference between mediation programs which “receive their cases from one or more justice agencies and thereby are attached to the justice system,” and “[c]ommunity conciliation systems [which] receive cases prior to entry into the justice system and therefore are outside it.” Raymond Shonholtz, *Should Dispute Resolution Be Attached to the Courts?*, DISP. RESOL. F., June 1984, at 3, 3 (containing the final portion of Shonholtz’s argument that dispute resolution should not be attached to the courts). Shonholtz argued that the distinction between the two forms of mediation programs is “significant because it has implications for how we conceive of the ultimate purposes of dispute resolution and for how this work is carried out.” *Id.*

11. Sharon Press, *Institutionalization of Mediation in Florida: At the Crossroads*, 108 PENN ST. L. REV. 43, 49 (2003).

12. Hedeem, *supra* note 4, at 104.

community issues as well.”¹³ Community mediation can offer forms of social justice that the courts are not equipped to provide:

Community mediation is a form of social justice that uses lawful processes to change what is perceived to be unjust. Courts are not often perceived as welcoming to all, but community mediation affords cultural diversity among mediators and overcomes financial barriers. Although laws are often based upon the desires and values of the dominant cultural group, community mediation gives voice to all those involved in environmental issues. Racial profiling and overrepresentation of minorities in our judicial processes exist; nevertheless, community mediation honors cultural differences and encourages restorative justice. Although law enforcement officers are moving toward community-oriented policing, community mediation affords new opportunities for enhanced community relations with city and county police.¹⁴

Initially, community mediation was supported by national foundations and the federal government, but this support tapered off in the 1980s.¹⁵ A common way for community programs to address both funding and case-management issues was for the programs to become more closely aligned with the courts.¹⁶ For example, in New York, the state’s Community Dispute Resolution Centers Program has been under the direction of the state’s chief judge and the chief administrative judge since 1981.¹⁷

13. Martha Weinstein, *Community Mediation: Providing Justice and Promoting Transformation*, 19 CONFLICT RESOL. Q. 251, 251 (2001).

14. *Id.* at 252. It is interesting to note that in some locations, the terminology “citizen dispute settlement” or “neighborhood justice center” is used rather than the term “community mediation.” See Sharon Press, *Institutionalization: Savior or Saboteur of Mediation?*, 24 FLA. ST. L. REV. 903, 905 (1997).

15. Drake & Lewis, *supra* note 9, at 3.

16. *Id.* In 1983, “one-third of all centers were court connected.” *Id.* In 1988, that number rose to more than half. *Id.*; see Press, *supra* note 14, at 905–06.

17. Thomas F. Christian, *Should Dispute Resolution Be Attached to the Courts?*, DISP. RESOL. F., June 1984, at 4, 5.

The chief administrative judge contracts with the private nonprofit agencies to provide dispute resolution services in counties. The Office of Management Support of the Unified Court System monitors and evaluates each program. . . . Because of attachment to the court, the program has access to the state computer, technical assistance, on-site visits, seminars and conferences, a state newsletter, and library materials including films, tapes, slides, periodicals, and books. Uniform standards and guidelines can be set for training curriculum and

As I explored in my article, *Institutionalization: Savior or Saboteur of Mediation?*, the trend towards institutionalization was both positive and negative for the field.¹⁸ One positive consequence was that the institutionalization of community mediation provided “legitimacy and widespread utilization” to mediation in general (including community mediation).¹⁹ The legitimization of mediation made more people aware that the process existed and was a viable alternative to the courts.²⁰ After all, mediation is “a process that is only useful if one knows about it. One can only make informed decisions about whether to use mediation if one is aware that the process exists.”²¹

However, a negative consequence of the increased use and acceptance of mediation was the corresponding increase in rules, statutes, and regulations controlling mediation.²² An additional misfortune is that the increased use of mediation shifted the focus from party empowerment and from mediation being a justice event to a focus on clearing “unwanted cases out of court.”²³

Even more damning, some critics argue that community mediation offers participants lesser remedies than that of the traditional court system:

Some observers feel that many disputants lose at mediation even if they feel that they have won (e.g., by missing out on treble-damages available from landlord-tenant laws when they settle for half of the security deposit being returned by the landlord) and that ultimately the society loses when people’s legal options are compromised away by the growth of mediation. The issue is especially worrisome if a disproportionate segment of

operating procedures. . . . The programs also have recognition as a program that contracts with the chief administrative judge and this increases acceptance by the justice system and the average citizen.

Id.

18. Press, *supra* note 14, at 903.

19. *Id.* at 917.

20. *Id.*

21. *Id.*

22. *Id.* at 908. It also is important to note that this includes the development of ethical codes which highlighted the importance of impartiality and neutrality. *See id.*

23. Daniel McGillis, *What’s Gone Right—And Wrong—For Justice Centers*, DISP. RESOL. F., Dec. 1988, at 5, 5.

mediation program clientele is economically disadvantaged.²⁴

At the Symposium, Rashad Turner's remarks resonated for me as a return to the roots of my entry to this field and in many ways, the roots of the mediation field. Ultimately, they led me on a quest to find a balance between being an ally of social justice causes and remaining committed to my ADR values.

*B. Benjamin Lowndes*²⁵

Before becoming a conflict resolution practitioner, I worked to find a way to marry my academic interests in rhetoric and composition with my calling to work for social justice. My fascination with the intersection of identity, language, and relationships led me to study the works of Ferdinand de Saussure²⁶ and Jacques Derrida,²⁷ among others. My studies in rhetorical theory fostered my belief that every person comes from a unique experience. I believe that conflicts of all sizes derive from the places where experiences and identities diverge, and that "peace" can be accomplished by finding and celebrating the spaces where experiences and identities converge. I was therefore drawn to ADR because I wanted to be a "peace builder;" I wanted to put theory to practice to help others find places of convergence.

24. *Id.* at 6.

25. Benjamin Lowndes is the deputy ombudsman at the Minnesota Department of Transportation. Lowndes's interest in conflict resolution began while studying English rhetoric and composition as an undergraduate student at Creighton University and as a graduate student at the University of Nebraska at Omaha. Looking for ways in which to connect theory to practice, he earned his J.D. and Certificate in Advocacy and Problem Solving from Hamline University School of Law. While at Hamline, Lowndes served as a research assistant for Professor Sharon Press, competed in negotiation and mediation representation competitions, participated in Hamline's mediation clinic, and volunteered as a trainer for a high school peer mediation program. Lowndes continues to develop his understanding of and experience within the dispute resolution field by serving on the board of directors of Community Mediation & Restorative Services, Inc., and as a member of the governing council of the Alternative Dispute Resolution Section of the Minnesota State Bar Association.

26. *See, e.g.*, FERDINAND DE SAUSSURE, NATURE OF THE LINGUISTIC SIGN (1916), *reprinted in* DAVID H. RICHTER, THE CRITICAL TRADITION: CLASSIC TEXTS AND CONTEMPORARY TRENDS 842-44 (3d ed. 2007).

27. *See, e.g.*, JACQUES DERRIDA, DIFFERENCE (1982), *reprinted in* DAVID H. RICHTER, THE CRITICAL TRADITION: CLASSIC TEXTS AND CONTEMPORARY TRENDS 932-49 (3d ed. 2007).

I feel that I have become a peace builder by developing and practicing ADR skills and processes, particularly as a mediator. I see my impartial involvement in people's conflicts as a means to help them learn more about themselves and others while working toward a solution suitable for all. I am encouraged when the parties to a dispute are able to voice their perspectives while working toward a common solution to their problem. To me, instances like these demonstrate that peace can be made incrementally in our time.

Yet, at times, I cannot help but feel as though I am clinging too heavily to concepts of peace building as a "neutral"—at the expense of addressing head-on the pressing justice issues of our time. There are instances when I want to enter the current conversations revolving around a social justice issue, such as race or equity. But, I keep censoring myself, holding my views close to my chest because I do not want to appear as being biased one way or the other. When topics such as these arise, I often find myself reciting, "Well, I can see that point of view," to each perspective without expressing my own opinion.

I recognize that there is value in suspending judgment and taking in all perspectives. After all, this is what we are trained to do as conflict resolution practitioners, and maybe it is a trait that should be practiced even more so that we tone down the heated rhetoric that is so common today. Yet, I cannot help but feel as though I am actually limiting my overall goal of being a peace builder by my self-censorship.

I believe that there are a couple of reasons for why I have increasingly censored myself as of late. On a very practical level, I do not want to limit any professional opportunities for myself as a fairly new ADR professional. I could be seen by some as improperly "taking a side" if I publically express my point of view or take some sort of action. This, therefore, would put into question my ability to offer my skills and talents to conflicts that involve issues about which I have expressed an opinion.

On a theoretical level, speaking out could potentially raise some ethical concerns. I do not want to compromise the ethical value of impartiality by "taking a side" in advance of working on an issue. Again, though, I cannot help but wonder whether I am taking these concerns too far.

This internal debate came to a head at the Symposium, when the first panel, *Setting the Context*, served as a proverbial "aha!"

moment for me. During this discussion, Rashad Turner challenged attendees to think about ways in which their skills and talents could positively contribute to our communities. He asked how we each could serve as an “ally” to causes that matter, noting that the word “ally” means different things to different people.

While he spoke from the context of the Black Lives Matter movement, this call struck me more broadly. It led me to wonder whether it was in fact possible, in light of the concerns enumerated above, for me to be an “ally” to causes that matter to me without compromising the value I place in neutrality. Ultimately, it led me to seriously examine whether it is possible to expand the ways I work for social justice and peace as a conflict resolution practitioner.

C. Together

We both serve on the board of directors for the Community Mediation & Restorative Services, Inc., a community mediation program based in the Twin Cities, and on the governing council of the Alternative Dispute Resolution Section of the Minnesota State Bar Association. It just so happens that around the time of the Symposium, we were discussing the roles that each of these organizations play in community conversations, such as eliciting discussions and conversations on community-police relations and race. Indeed, some of the thoughts and ideas expressed above shaped these conversations, but the Symposium motivated us to look harder at the ways the dispute resolution community and practitioners could play a role in such conversations.

As you can see in our individual reflections, we were both surprised and intrigued by Rashad Turner’s talk on ally-ship. His talk helped us to focus our ideas around the concept of ally-ship and whether conflict resolution practitioners could serve as “allies” to specific social justice movements. We concluded that we do, in fact, have a professional role to play in the greater issues of our time and that we can, as allies, offer our skills and knowledge to work for greater peace and justice. This essay explores this conclusion, first looking to the concept of ally-ship and then turning to the ways in which conflict resolution practitioners can serve as allies. We recognize that at this point our ideas are still in their infancy, but we hope that this essay sparks further discussion within our field on this timely and important topic.

II. ALLY-SHIP

A. *Definitions of Ally-ship*

What does it mean to be an ally? A good place to start is to review various dictionary definitions of ally. According to Merriam-Webster, the simple definition of ally is “to join (yourself) with another person, group, etc., in order to get or give support”²⁸ and the “full definition” is “to unite or form a connection or relation between” or “to form or enter into an alliance.”²⁹ Perhaps not surprisingly, the legal definition of ally is narrower: “A nation which has entered into an alliance with another nation. A citizen or subject of one of two or more allied nations.”³⁰ We also checked the Merriam-Webster thesaurus to see what words were synonyms of, or related to the word “ally,” and found the following: friend, helper, supporter, assistant, partner, confederate, associate, and collaborator.³¹

B. *Snapshots of Ally-ship*

As you can see, these definitions and synonyms are not particularly helpful to understanding what it means to serve as an ally in the context of social causes. In order to understand how we have come to think about the concept of ally-ship, we urge the reader to consider these three different snapshots of ally-ship:

1. *Abraham Joshua Heschel*

The first snapshot comes from the civil rights movement. Consider the image of Abraham Joshua Heschel alongside Martin Luther King, Jr., in Selma, Alabama:

28. *Ally*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/ally> (last visited Aug. 11, 2016).

29. *Id.* It is helpful to note that the origin of ally, according to Merriam-Webster, is the Middle English word *allien*, from the Anglo-French word *alier*, which is from the Latin word *alligare*, which means “to bind to,” and is a combination of the Latin words “*ad*” and “*ligare*,” which mean, respectively, “to” and “bind.”

30. *Ally*, THELAWDICTIONARY.ORG, <http://thelawdictionary.org/ally/> (last visited Aug. 11, 2016) (citation omitted).

31. *Ally*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/thesaurus/ally> (last visited Aug. 11, 2016).

Heschel, a Polish immigrant, scion of a long line of Chasidic rabbis, Professor of Jewish Ethics and Mysticism at the Jewish Theological Seminary of America, and King, an American descendant of slaves, a compassionate protector of the oppressed, charismatic orator, writer and theologian, marched side-by-side from Selma to Montgomery to protest the pernicious racism that poisoned America and humiliated its African-American citizens. A host of white citizens, filled with venomous hate, surrounded the marchers, jeered and spat upon them. But as Heschel declared later: “When I marched in Selma, my feet were praying.” It is important not only to protest against evil but to be seen protesting. Faith in the goodness and oneness of God is powerfully expressed through the language of feet, hands, and spine.³²

2. *Same-Sex Marriage Statutes*

Fast-forward several decades and consider the passage of marriage equality statutes throughout the United States. In Minnesota, “[i]n 2011, Republican majorities in the state’s legislature voted to put a constitutional amendment on the ballot banning same-sex marriage. Minnesota voters rejected the amendment and expelled Republicans from power, allowing a new majority to pass the marriage equality law just six months later.”³³ Organizers, under the banner of Minnesotans United for All Families, point to the following factors to explain their success:

- ALLIES: From its beginning, Minnesotans United for All Families sought to build a diverse, nonpartisan coalition. It avoided confrontation and steered clear of blunt words like “bigotry” and “discrimination.”
- FAITH: Although the side pushing the marriage amendment enjoyed substantial support from Catholic and evangelical churches, opponents of the amendment actively recruited help from other faith

32. Harold M. Schulweis, *Two Prophets, One Soul: Rev. Martin Luther King, Jr., and Rabbi Abraham Joshua Heschel*, SHALOM CENTER (Sept. 8, 2001), <https://theshalomcenter.org/node/122>.

33. Michael McIntee, *Marriage Equality Advocates Recall Minnesota’s Role in Supreme Court Ruling*, THE UPTAKE (June 27, 2015), <http://theuptake.org/2015/06/27/marriage-equality-advocates-recall-minnesotas-role-in-supreme-court-ruling>.

communities. Several organizers put it this way: “We refused to cede the religious ground.”

- MONEY: Minnesotans United raised more than \$12 million for the drive to defeat the amendment. The campaign dwarfed its opposition, both in the dollars raised and in the number of donors named.
- TIME: Opponents of the marriage amendment had a full year and a half to organize and mobilize their supporters. In fact, they had longer than that because the effort to ban same-sex marriage had made no secret of its existence ahead of time.³⁴

The work needed for this effort was accomplished by a coalition of people—members of the LGBT community working together with allies of the community.³⁵ A powerful aspect of the campaign, referred to as Minnesotans United’s “secret weapon,” was “a massive, one-on-one conversation drive. Supporters would talk with the people in their lives about voting no on the amendment.”³⁶ This drive was so successful because it was based on allies talking with members of their own communities on a personal basis.³⁷

3. *Minnesota Advertisement*

Finally, consider a full-page advertisement, which ran in the *Star Tribune* on February 1, 2016, “calling on residents” of Minnesota “to reject anti-Muslim expression as ‘un-Minnesotan.’”³⁸ The names listed in the advertisement included “Minnesota leaders in politics, higher education, health care, and business.”³⁹ Although this was partly the brainchild of U.S. Representative Keith Ellison (D-MN), a Muslim, the list primarily included non-Muslim allies—

34. Eric Ringham & Sasha Aslanian, *Eighteen Months to History: How the Minnesota Marriage Amendment Was Defeated—Money, Passion, Allies*, MPRNEWS (Nov. 9, 2012), <http://www.mprnews.org/story/2012/11/09/marriage-how> (“The effort has generated a string of superlatives: the most volunteers, the most cash, the biggest state campaign on record.”).

35. *Id.*

36. *Id.*

37. *Id.*

38. Paul Walsh & Maya Rao, *High-Profile Minnesotans’ Full-Page Ad Decries Bigotry toward Muslims*, STAR TRIB. (Feb. 1, 2016), <http://www.startribune.com/high-profile-minnesotans-full-page-ad-decries-bigotry-toward-muslims/367215901> (quoting advertisement).

39. *Id.*

Democrats and Republicans—who reminded Minnesotans that “we know better than to be silent or still in the face of bigotry shown to Muslims. Our fellow Minnesotans.”⁴⁰

These vignettes are just a few examples of people serving as “allies,” and they represent different aspects of how one can be an ally. In the first example, Rabbi Abraham Joshua Heschel took a very public stand and joined the protest by marching arm-in-arm with Reverend Dr. Martin Luther King, Jr.⁴¹ In the second example, there were a range of ally roles: contributing financially, making calls, and telling personal stories.⁴² In the final example, prominent individuals in the community joined together publically to lend support.⁴³

As you will see in Part III, we believe that conflict resolution practitioners can lend their talents and skills to people and causes as allies.⁴⁴ Please note that we focus on ally roles for individuals who typically identify as “neutral” in conflict resolution roles. These practitioners may wish to adopt the common ally role that an advocate could play.⁴⁵

III. CONFLICT RESOLUTION PRACTITIONERS AS ALLIES

A. *Conflict Resolution Skills*

We believe that conflict resolution practitioners can serve as excellent allies by lending their specialized and developed skill sets to a cause. These skills include active listening, perspective taking, interest identification, cultural and bias awareness, and option identification.⁴⁶ Although these skills are typically associated with mediation, they can be adapted to different uses to help those advancing a particular cause.

40. *Id.*

41. *See supra* Section II.B.1.

42. *See supra* Section II.B.2.

43. *See supra* Section II.B.3.

44. *See infra* Part III.

45. For a thoughtful discussion of how negotiators might utilize skilled neutrals to assist in effectively beginning a negotiation or to navigate a complex negotiation, see Bernard Mayer, *Allies in Negotiation*, in *THE NEGOTIATOR'S FIELDBOOK*, 603–13 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006).

46. *See generally* JENNIFER E. BEER & EILEEN STIEF, *THE MEDIATOR'S HANDBOOK* (rev. and expanded 3d ed. 1997).

The skill of active listening, or “giving good attention,” involves focus, withholding judgment, impartiality, openness, and care.⁴⁷ By listening and paying attention, our “goal is to have each person truly hear what the others are saying, to expand their own narrow sphere of attention outward and include other people and perspectives.”⁴⁸ Practically speaking, conflict resolution practitioners are skilled at hearing what various voices have to say and the meaning behind what is said.

Conflict resolution practitioners are also trained in techniques aimed at helping parties take various perspectives to help them to see the different sides of an issue. Mediators and facilitators use tools such as summarization and restating to check for understanding.⁴⁹ For instance, a mediator may ask the participants to restate what they are hearing from the others in the room, which “can help everyone listen and acknowledge what the issues and feelings are.”⁵⁰ Again, the end result is to help people have a better understanding of others’ perspectives.⁵¹

One core competency of a mediator and of a general conflict resolution practitioner is the ability to identify interests and underlying positions. In short, identifying interests and helping others to do the same is to essentially ask the key question: what matters and why?⁵² Taking these interests and helping people to develop options to meet them is another key activity and skill of a conflict resolution practitioner. One does this by eliciting ideas and helping people explore the alternatives.⁵³ Although the skill of interest and option identification is not unique to conflict

47. *Id.* at 68–69.

48. *Id.* at 68.

49. *Id.* at 94–95.

50. *Id.* at 95.

51. *See generally* ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT* (2d ed. 2005).

The mediation process contains within it a unique potential for transforming conflict interaction and, as a result, changing the mindset of people who are involved in the process. This transformative potential stems from mediation’s capacity to generate two important dynamic effects: empowerment and recognition. . . . Recognition means the evocation in individuals of acknowledgment, understanding, or empathy for the situation and the views of the other.

Id. at 22 (emphasis omitted).

52. *Id.* at 110.

53. *Id.* at 122–23.

resolution practitioners, it is certainly something they have a lot of practice doing throughout their day-to-day work.

Finally, a conflict resolution practitioner's awareness of bias and the practitioner's ability to identify cultural patterns can lend aid to the work of ally-ship.⁵⁴ Our work is not done in a vacuum, and we bring our own background and experience into the practice. By being aware of our own biases and by working to increase cultural awareness, members of our field can break down barriers while being open and honest about our own backgrounds and beliefs. Overall, these skills provide the groundwork for conflict resolution practitioners to serve in the different ally roles explored in the following continuum.

B. Ethical Considerations

As conflict resolution practitioners most closely affiliated with mediation, the notion of being an ally with another person or group was both appealing and provocative. On the one hand, community mediation is firmly rooted in the civil rights struggle and the need to relate to communities in conflict in a different way.⁵⁵ On the other hand, as mediation has developed, particularly in the more institutional setting of the courts, limits on how mediation is utilized have proliferated.⁵⁶ In particular, concerns about mediator impartiality and neutrality of the mediator have become prevalent.⁵⁷ One can see this in rules,⁵⁸ statutes,⁵⁹ and

54. *Id.* at 80–83.

55. *See supra* Section II.B.

56. *See Press, supra* note 14, at 908–09.

57. Young found that the failure to maintain impartiality was the most common complaint filed against mediators in Virginia and the second most common complaint filed against mediators in Florida. Paula M. Young, *Take It or Leave It, Lump It or Grieve It: Designing Mediator Complaint Systems That Protect Mediators, Unhappy Parties, Attorneys, Courts, the Process and the Field*, 21 OHIO S. J. DISP. RESOL. 721, 752, 757 (2006).

58. *See, e.g.,* FLA. R. CERTIFIED & CT.-APPOINTED MEDIATORS, *reprinted in* JAMES J. ALFINI, SHARON B. PRESS & JOSEPH B. STULBERG, *MEDIATION THEORY AND PRACTICE* 645, 654 (3d ed. 2013) [hereinafter *FLORIDA RULES*] (referencing Rule 10.330 Impartiality, “A mediator shall maintain impartiality throughout the mediation process.”).

59. For example, the Uniform Mediation Act (UMA) requires that “a mediator must be impartial, unless after disclosure . . . the parties agree otherwise.” UNIF. MEDIATION ACT § 9(a)(2)(g) (UNIF. LAW COMM’N 2003). The UMA also specifies in subsection (a) that an individual, prior to accepting a

training materials.⁶⁰ Two of the eight standards in the *Model Standards of Conduct for Mediators* relate to this topic: Standard II. *Impartiality*, and Standard III. *Conflicts of Interest*.⁶¹

Standard III requires a mediator to “avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation.”⁶² Because this applies during and after mediation, at first blush it appears not to relate to the discussion of “ally” activity outside of mediation. However, the standard states that a “conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, *whether past or present, personal or professional, that reasonably raises a question of a mediator’s impartiality.*”⁶³

mediation, must:

- (1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including . . . an existing or past relationship with a mediation party or foreseeable participant in the mediation; and (2) disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

Id. at § 9(a)(1)–(2). Failure to do so results in the preclusion of the mediator from asserting a privilege under the UMA. *Id.* § 9(a)(2)(d).

60. For example, Jennifer E. Beer and Eileen Stief point to the frequency in which disputants comment on mediator impartiality and suggest that mediators need to “think about impartiality from two divergent viewpoints: first, you want to facilitate fairly, without favoring any particular person or position; . . . second, you need to monitor whether the parties *perceive* you as impartial” BEER & STIEF, *supra* note 46, at 77–78. They point out that “[t]he first concern is between you and your conscience; the second can make or break the mediation.” *Id.*

61. The *Model Standards of Conduct for Mediators* were initially drafted in 1994 by the American Arbitration Association, the American Bar Association’s Section of Dispute Resolution, and the Association for Conflict Resolution (through its predecessor organization the Society of Professionals in Dispute Resolution). MODEL STANDARDS OF CONDUCT FOR MEDIATORS (2005), *reprinted in* JAMES J. ALFINI, SHARON B. PRESS & JOSEPH B. STULBERG, *MEDIATION THEORY AND PRACTICE* 603, 603 n.1 (3d ed. 2013). In 2005, a joint committee of representatives from the same organizations revised the standards, which were then adopted by each participating organization. *Id.* at 603. The 2005 revisions were approved by the American Bar Association’s House of Delegates on August 9, 2005, by the Board of the Association for Conflict Resolution on August 22, 2005, and by the American Arbitration Association on September 8, 2005. *Id.* at 603 n. 3.

62. *Id.* at 605–06.

63. *Id.* at 605 (emphasis added). Impartiality is defined as “freedom from favoritism, bias or prejudice.” *Id.*

Standard III further requires a mediator to “make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator”⁶⁴ and to “disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator’s impartiality.”⁶⁵ After disclosure, the mediator may continue as the mediator “if all parties agree.”⁶⁶ However, “[i]f a mediator’s conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.”⁶⁷

The conclusion that one must draw from the requirement to withdraw even if the parties agree otherwise is that impartiality relates to the very core of the integrity of the process. The *Reporter’s Notes to the Model Standards* bolsters this conclusion:

[W]hile Standard II and III are explicitly connected in a fundamental manner, the Joint Committee felt it important to retain the distinction in order to emphasize that a mediator’s impartiality is central to the mediation process and that mediator conduct that raises questions of conflicts of interest serves to undermine public or party confidence in the central integrity of the process.⁶⁸

Indeed, a search of the American Bar Association Section of Dispute Resolution’s National Clearinghouse for Mediator Ethics Opinions reveals that the three most commonly requested areas for guidance are: (1) impartiality (159 opinions); (2) quality of process (147 opinions); and (3) conflicts of interest (134 opinions).⁶⁹ Currently, the Florida state court system is the only dispute

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 605–06.

68. REPORTER’S NOTES: MODEL STANDARDS OF CONDUCT FOR MEDIATORS (2005), *reprinted in* JAMES J. ALFINI, SHARON B. PRESS & JOSEPH B. STULBERG, *MEDIATION THEORY AND PRACTICE* 611, 622 (3d ed. 2013).

69. See *Mediator Ethics Opinions*, AM. BAR ASSOC., http://www.americanbar.org/groups/dispute_resolution/resources/mediator_ethics_opinions.html (last visited Aug. 11, 2016). The remaining possible searches include self-determination (134), confidentiality (99), competence (74), advertising (70), fees and expenses (30), advancement of the mediation practice (26), and other (15). *Id.*

resolution program that publishes the outcomes of mediator grievances when a mediator is sanctioned.⁷⁰ Of the twenty-three published grievances, thirteen were “good moral character” complaints relating to the individual’s suitability for certification as a mediator for the Florida state courts.⁷¹ Of the remaining ten, six of the grievances resulted in sanctions against the mediator for violating impartiality,⁷² conflicts of interest,⁷³ or both.⁷⁴

70. *Sanctions Imposed*, FLA. CTS., <http://flcourts.org/resources-and-services/alternative-dispute-resolution/information-consumers/discipline-proceedings-sanctions/sanctions-imposed.shtml> (last visited Aug. 11, 2016).

71. FLORIDA RULES, *supra* note 58, at 666 (referencing Rule 10.800 Good Moral Character; Professional Discipline).

72. *Id.* at 654 (referencing Rule 10.330 Impartiality).

73. *Id.* at 665 (referencing Rule 10.340 Conflicts of Interest).

74. *Sanctions Imposed*, *supra* note 70, at MQB 2013-015 (“In a dissolution of marriage case, the Mediator, who owns and operates a document preparation and mediation business, made changes requested by the wife to the parties’ Marital Settlement Agreement after the mediation and before the parties signed the Agreement without consulting the husband . . . made decisions for the parties without their input . . .”); *id.* at QCC 2015-013 (“The Applicant also violated rule 10.330(a), Impartiality, by stating in [a solicitation] letter, ‘We save *you* the time of the exhausting drawn out court process while also protecting *you* from monetary judgment’ and ‘We handle *your* entire case’ (emphasis added); and rule 10.340(d), Conflicts of Interest, by stating, ‘Before the court creates a negative mark on your record permanently, you need to call us. If you use our services, you won’t have to go to court or meet anyone in person. You can even take your family on vacation! We handle your entire case.’”); *id.* at MQB 2013-005 (“The solicitation letters and an information sheet also authored by the mediator suggested bias or favoritism by representing that the company had ‘helped countless homeowners reach resolution of their foreclosure cases’ and the firm’s mediations had the effect of ‘positively impacting the lives of countless Florida homeowners.’”); *id.* at MQB 2012-018 (“The mediator was hired by his sister-in-law who was the mediation coordinator for a law firm representing plaintiffs in mortgage foreclosure actions. The Mediator conducted more than 100 mediations in which the law firm was counsel of record and a participant, resulting in payment to him of more than \$30,000 in a one month period. The Mediator did not disclose the conflict of interest or the extent of his financial relationship with the law firm to the mediation participants. The law firm was a mediation participant.”); *id.* at MQB 2012-005 (“[D]uring a family law mediation the mediator attempted to procure bankruptcy documentation preparation services from the parties . . .”); *id.* at MQB 2010-001 (explaining that the mediator had maintained a friendship “with one mediation participant (wife) while assuming an adversarial position to the other participant (husband) by giving advice and counsel to the participant wife prior to the institution of legal proceedings and during legal proceedings”).

Thus, it is with good reason that mediators take seriously the standards related to impartiality and conflicts of interest. Since the conflict resolution process of mediation has risen the most significantly,⁷⁵ this constraint has become a more general concern.⁷⁶ It is therefore important for conflict resolution practitioners, especially those trained as mediators, to be thoughtful and intentional when deciding whether to serve as an ally and, if so, choose a role along the continuum with which they are comfortable.

C. *The Continuum*

We are not alone in being intrigued by the intersection of conflict resolution practitioner skills and the different roles that someone with those skills could play. In *Beyond Neutrality*, Bernie Mayer challenged the dispute resolution community to think more broadly about its role.⁷⁷ In *The Third Side*,⁷⁸ William Ury describes his concept of allies in the frame of “thirdsiders.” He explains the role that thirdsiders play as follows:

Conflict does not come out of nowhere but proceeds from latent tension, develops into overt conflict, erupts into power struggle, and from there crosses the threshold of destructive conflict and violence. As Thirdsiders, our aim is not to suppress conflict altogether but simply to keep the trajectory of escalation below this threshold.

In addition to being a perspective, the Third Side is a systemic approach to handling conflict. We have at least three major opportunities to transform conflict from destructive fighting into constructive change.

The first is to *prevent* destructive conflict from emerging in the first place by addressing latent tensions. The second is

75. See generally Press, *supra* note 14, at 903.

76. It should be noted that standards relating to neutrality and conflicts of interest also are found in arbitrator codes of ethics. For example, see AM. ARBITRATION ASSOC., *The Code of Ethics for Arbitrators in Commercial Disputes: Canon II*, 1, 4 (Mar. 1, 2004), https://www.adr.org/aaa/ShowProperty?nodeId=%2FUCM%2FADRSTG_003867&revision=latestreleased (“An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create and appearance of partiality.”).

77. See BERNARD S. MAYER, *BEYOND NEUTRALITY: CONFRONTING THE CRISIS IN CONFLICT RESOLUTION* (2004).

78. WILLIAM URY, *THE THIRD SIDE: WHY WE FIGHT AND HOW WE CAN STOP* 22–26 (Penguin Books 2000) (1999).

to *resolve* any overt conflicts which do develop. The third is to *contain* any escalating power struggles that temporarily escape resolution. What is not prevented is resolved; and what is not resolved is contained. The motto of the Third Side is thus: “Contain if necessary, resolve if possible, best of all prevent.”⁷⁹

He goes on to identify ten thirdsider roles. He places provider, teacher, and bridge-builder in the prevention category. In the resolve category, he includes what we generally think of as the more typical dispute resolution roles: mediator, arbitrator, equalizer, and healer. In his final category, defined as roles to “contain,” he includes witness, referee, and peacekeeper.⁸⁰

As we thought about the unique skills that dispute resolvers have and the importance of allies, we thought about the following roles, from least intrusive to most intrusive (and from least problematic to most problematic from a “neutral’s” perspective). Given the twenty-four hour news cycle and the speed in which perceptions are formed and conflicts can escalate, we have developed some additional roles for consideration. They are listed as follows:

- Build capacity for communities to deal with each other;
- Facilitate dialogue groups or circle processes;
- Run conflict resolution processes;
- Comment (set the tone) in a manner that adds another perspective and “complexifies [sic]”⁸¹ the discussion, on social media or news sites anonymously;⁸²

79. *Three Opportunities*, THIRD SIDE, <http://thirdside.williamury.com/what-is-the-third-side/three-opportunities/> (last visited Aug. 11, 2016).

80. *Id.*

81. BERNARD S. MAYER, THE CONFLICT PARADOX: SEVEN DILEMMAS AT THE CORE OF DISPUTES 14 (2015) (“As clashes escalate, disputants are more likely to see their choices in simpler and starker terms, and they are more likely to cast the conflict as a matter of right or wrong. As a result, they tend to latch on to one side of a polarity and to assume that their adversaries are doing the same (although not necessarily the same side).”).

82. DISPUTE RESOL. INST., Symposium, *Session One Notes, An Intentional Conversation About Public Engagement and Decision-Making: Moving from Dysfunction and Polarization to Dialogue and Understanding*, MITCHELL HAMLINE SCH. L. 1–5 (Oct. 23–24, 2015), http://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1030&context=dri_symposia. During the facilitated conversation that

- Comment (set the tone) in a manner that adds another perspective and deepens the discussion, on social media or news sites with attribution;
- Talk to friends, colleagues, or family members to bring other perspectives into a conversation;
- Advise members of a group or serve as a conflict coach; or
- Join the group/participate in a protest or actively engage on one side of the issue.

1. *Build Capacity in the Community*

Based on our experience, we believe that, generally speaking, conflicts do not start out as large and violent. Instead, it is possible to trace even the largest conflict back to a “simpler” time when the issues were often interpersonal and involved an act of disrespect (whether real or perceived, recognizing that if one perceives disrespect, even if not intended, it *is* disrespect). A significant way that one can be an ally is to help build capacity for individuals to develop the skills necessary to address issues when they are smaller and more manageable. We agree with Ury, that much of this important work begins when a thirdsider (or an ally, in our language) becomes involved in preventative work.

took place after the first session, theme leaders set the stage, one group opted to discuss the issues related to “anonymity,” especially on social media websites and comments section of news sites. *Id.* Themes that emerged from that group were that there are pros and cons about this method of engagement. *Id.* On the one hand, it allows people not to really engage while on the other, there may be value in people being able to express their views without attribution because one can learn something even from posts which appear to be “anonymous rants.” *Id.* at 4.

2. *Facilitate Dialogue Groups*⁸³ or *Circle Processes*⁸⁴

While dialogue can (and should) take place at multiple stages in a conflict situation, including prior to there being a specific conflict, we envision here the convening of dialogue groups or circle processes in response to a conflict situation. Circle processes are often associated with restorative justice concepts,⁸⁵ but increasingly are being utilized for community engagement.⁸⁶ The common thread between these concepts is that both concepts involve allies working with communities in conflict to engage in conversation. The conversation's aim is to improve the understanding of each other and the discourse between groups, which might lead to a decrease in tension. Those dispute resolution practitioners possessing the skills listed in Part III, Section A, *supra*,

83. *See Our Method*, PUBLIC CONVERSATIONS PROJECT, <http://www.publicconversations.org/our-method#sthash.LrRVZEDA.dpuf> (last visited Aug. 11, 2016).

Public Conversations' method, called Reflective Structured Dialogue, is designed to help people have the conversation they want to have about some of the most difficult topics. It draws on strategies developed by family therapists to promote effective communication in the midst of painful differences. Our practitioners also incorporate insights and tools from mediation, interpersonal communications, appreciative inquiry, organization development, and psychology and neurobiology. This approach enables participants to share experiences and explore questions that both clarify their own perspectives and help them become more comfortable around, and curious about, those with whom they are in conflict.

Id.

84. *See generally* KAY PRANIS, *THE LITTLE BOOK OF CIRCLE PROCESSES* (2005).

85. *See generally* HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* (2002). Restorative justice is often considered in juxtaposition to retributive justice, where committing harms are punished. *See id.* at 23.

Restorative justice, is constructed upon three simple elements or pillars: harms and related needs (of victims, first of all, but also of communities and the offenders); obligations that have resulted from (and given rise to) this harm (the offenders', but also the communities'); and engagement of those who have a legitimate interest or stake in the offense and its resolution (victims, offenders, and community members).

Id. at 24–25 (emphasis omitted).

86. Howard J. Vogel, *From Conflict to Community: The Contribution of Circle Process in Moving from Dysfunction and Polarization to Dialogue and Understanding in Direct Public Engagement in Local Government Decision-making*, 42 MITCHELL HAMLINE L. REV. 1546 (2016).

will be most helpful in assisting in organizing and running these conversations.

3. *Run Conflict Resolution Processes*

There are many different types of conflict resolution processes.⁸⁷ In this context, the most commonly utilized would be mediation, a process in which a neutral party “facilitates communication” without making decisions for those in dispute.⁸⁸ We include providing conflict resolution processes as an ally function because the processes offer people a means of working through contentious issues. Even when individuals or groups seek to peacefully achieve their goals, they may not have the ability to do so alone. From a minimum of providing “good offices” (a space to meet and talk with “the other”) to offering mediation, an ally can utilize the skills discussed in Part III, Section A, *supra*, to assist in creating an environment where conflicts can be resolved.

4. *Comment (Set the Tone) Anonymously*

The widespread use of the Internet has changed how people obtain news. Even traditional media sources have websites where they publish news stories. On these websites, people can provide comments—sometimes anonymously or via aliases and sometimes only with names. Below we will discuss commenting with your name, which we view as a stronger ally activity. Here we will focus on the idea of making an anonymous comment. At the Symposium, Rashad Turner pointed out that early commenters set the tone for what follows. He urged Symposium participants to join the discussion with supportive comments soon after a story appeared online. We believe that conflict resolution practitioners are uniquely qualified to help bring different perspectives and add complexity to the discussion. The comments that follow a story can be compared to “mob (or group) mentality.”⁸⁹ This phenomenon is

87. MINN. GEN. R. PRAC. 114.02 (2016). In Minnesota, the courts have identified seven processes: arbitration, consensual special magistrate, summary jury trial, early neutral evaluation (ENE), non-binding advisory opinion, neutral fact finding, and mediation. In addition there are two “hybrid” processes: mini-trial and mediation-arbitration (med-arb). *Id.*

88. MINN. GEN. R. PRAC. 114.02(7) (2016).

89. Megan Donley, *Examining the Mob Mentality*, SOUTH SOURCE, <http://source.southuniversity.edu/examining-the-mob-mentality-31395.aspx> (last

exacerbated by group size and anonymity.⁹⁰ Allies, by entering the discussion in a measured way, can change the tone of the discussion and invite others who think differently than “the mob” to participate. Raising consideration of another point of view or another way to consider the issue can be an important ally function—even if done anonymously.

5. *Comment (Set the Tone) with Attribution*

Everything described in “commenting anonymously,” applies to this ally role. In addition, there is added value when someone puts her name to the comments—and also added risk. In terms of added value, when someone provides attribution, people tend to take the statement more seriously. When a name is provided, others cannot simply dismiss the comment as “a fake” or made-up. In addition, the more well-known someone is in the community—particularly if one is known in the community for balance and measured responses—it stands to reason that more weight will be given to the comment.

Therefore, individuals associated with conflict resolution processes and programs will serve an ally function in two ways by weighing in with attribution: (1) by virtue of their understanding of perspective taking and interest identification, they can provide substantive support in a more nuanced conversation found in the comments which might lead to a greater understanding among members of the community; and (2) because of the respect they possess, others may pay particular attention. Those who are less knowledgeable about the substance of the issue may be persuaded by the commentary to understand the complexity of the situation and develop some empathy for the “other” side.

The additional risk of commenting with attribution comes from the possibility that one will be seen as compromising neutrality and thus deemed to be no longer able to provide conflict resolution services. One also might worry about being brought into

visited Aug. 11, 2016) (“When people are part of a group, they often experience deindividuation [sic], or a loss of self-awareness. When people deindividuate [sic], they are less likely to follow normal restraints and inhibitions and more likely to lose their sense of individual identity. Groups can generate a sense of emotional excitement, which can lead to the provocation of behaviors that a person would not typically engage in if alone.”).

90. *Id.* (“When people feel that their behavior cannot be traced back to them, they are more likely to break social norms . . .”).

the fray more personally because commenting with attribution exposes the commentator to personal attacks.

6. *Bring Additional Perspectives into Conversations*

This ally function is very similar to the two described immediately above (commenting in print and media discussions with or without attribution) and shares some of the same benefits and risks. We separate this one and place it further down on the continuum because it places the ally in the more intense role of participating in a conversation, in contrast to just inserting a written comment. While a written comment may have an impact on changing the direction of the comments, it does not provide the benefits of an exchange of information.

An underlying theory of negotiation (and all of the conflict resolution processes that flow from negotiation) is that individuals can develop mutual understanding and reach “agreements” when those involved participate in a mechanism aimed at sharing their respective perspectives (and interests).⁹¹ Because conflict resolution practitioners have the skills of perspective taking, we can serve an important ally role of bringing alternative perspectives into conversations with friends, relatives, and colleagues.

For example, over the past several months since the Symposium, Black Lives Matter has planned several protests, including blocking the finish line of the Medtronic Marathon,⁹² blocking the light rail on the day and time when fans would be travelling to the Minnesota Vikings football game,⁹³ and interfering with the finish of the Red Bull Crashed Ice event outside the iconic

91. See ROGER FISHER & WILLIAM URY, *GETTING TO YES* 11–14 (Bruce Patton ed., 3d ed. 2011).

92. Mara H. Gottfried & Marino Eccher, *Black Lives Matter's Twin Cities Marathon Protest Peaceful*, ST. PAUL PIONEER PRESS (Oct. 3, 2015), <http://www.twincities.com/2015/10/03/black-lives-matters-twin-cities-marathon-protest-peaceful/> (“A protest against police brutality that originally sparked consternation with talk of ‘shutting down’ the Twin Cities Marathon passed without incident Sunday, with protesters firmly cordoned off from runners even as they demonstrated nearby.”).

93. *Protesters Block Light Rail before Vikings Home Opener*, KARE 11 (Sept. 20, 2015), <http://legacy.kare11.com/story/news/local/2015/09/19/metro-transit-preps-for-protesters-plan-to-block-light-rail/72470980/> (“Protesters with Black Lives Matter—St. Paul blocked traffic and shut down the Green Line light rail Sunday, as Vikings fans attempted to get to the stadium for the home opener. Metro Transit replaced the shut down light rail lines with buses . . .”).

Saint Paul Cathedral in downtown Saint Paul.⁹⁴ The protests were planned in order to bring attention to specific issues and to request that “demands” be met.⁹⁵

Like the protest of the Minnesota State Fair,⁹⁶ each plan was met with backlash against Black Lives Matter and great outcry that the protest should not take place because the wrong people would be “punished” or inconvenienced.⁹⁷ Each protest has been non-violent and both the marathon and Crashed Ice protests were called off after Black Lives Matter organizers felt that they had achieved what they were seeking. Each of these events and the time leading up to them has provided important roles and opportunities for allies. The planned protests were all announced well in advance and provided lots of preparation time for the city and the police—and plenty of time for there to be conversations about the protests.

Author Sharon Press often found herself in the role of suggesting to people who were upset about the planned protests to consider that the protests have all been non-violent, that they have been in response to requests for action which have been ignored, and that consistently, Black Lives Matter has made its plans known well in advance so that arrangements can be made. For example,

94. Randy Furst, *Black Lives Matter Leaders Cancel Crashed Ice Protest*, STAR TRIB. (Feb. 26, 2016), <http://www.startribune.com/black-lives-matter-leaders-cancel-crashed-ice-protest/370286511/> (“A Black Lives Matter demonstration aimed at disrupting a major winter event in St. Paul this weekend was canceled Friday after a leader of the protest group said city and state authorities met their demands.”).

95. For example, the Crashed Ice protest was “triggered by the disclosure that a St. Paul police officer posted a message on Facebook urging people to run over marchers on Martin Luther King, Jr., Day. The marchers were protesting the deaths of Jamar Clark and Marcus Golden, who were fatally shot by Minneapolis and St. Paul police, respectively. Black Lives Matter wanted the officer, Sgt. Jeff Rothecker, fired and stripped of his license to be a peace officer. Rothecker subsequently resigned . . .” *Id.*

96. Stephen Montemayor, *Protesters Call for Justice in March to State Fair*, STAR TRIB. (Aug. 31, 2015), <http://www.startribune.com/st-paul-braces-for-state-fair-protest-march-today/323310741/> (“Hundreds of Black Lives Matter St. Paul supporters staged a peaceful disruption of the Minnesota State Fair on Saturday, gathering at the main gates and chanting their message of racial inequities and unfair treatment of minorities as throngs of fairgoers watched from inside the fenced fairgrounds.”).

97. The *Star Tribune* interviewed fairgoer Jerry Putzir of St. Charles, Minnesota, who stated, “They’re just hurting themselves . . . Everyone has the right to protest, but people are just fed up that they’re blocking the traffic, wrecking somebody’s business and blocking the entrances. It inconveniences.” *Id.*

when the light rail was to be blocked before the Vikings game, MetroTransit was able to announce in advance that additional buses would be provided to transport fans who would have been on the light rail.⁹⁸

In those exchanges, Press was gratified to see the light of acknowledgement kindled in the people with whom she spoke, and she felt that as a result of the exchange, these individuals came away with a more nuanced understanding of another perspective. This is the ally role we are suggesting.

7. *Advise Members of a Group on Conflict Coaching*

The seventh ally role in our continuum is that of serving as a conflict coach or a conflict advisor to an individual or group.

Conflict coaching is defined as a set of skills and strategies used to support peoples' ability to engage in, manage, or productively resolve conflict. . . . Conflict coaching enables the coachee to talk about the conflict with a neutral third party (the conflict coach), consider options for managing the conflict, and design an approach to discuss the conflict with the other person.⁹⁹

This ally role suggests a much closer connection to the individual (or group) where the coach or advisor is working with the individual (or group) to develop strategies for achieving the desired goals. A conflict resolution practitioner's understanding of conflict and of productive means for moving through conflict can make serving as a conflict coach or advisor a very valuable ally role.

8. *Join the Group (As a Conflict Coach) or Participate in a Protest*

The final ally role in our continuum is to join the group and actively engage on one side of the issue. We believe that a conflict resolution practitioner can serve an important ally role as part of the group. This role could be akin to an "internal" conflict coach or could merely include being one of the people who participates in a protest. As an internal conflict coach or advisor, a conflict resolution practitioner can bring professional knowledge of conflict escalation and de-escalation to the core of the decision-making for the group in order to help make the actions for the

98. See *supra* note 93 and accompanying text.

99. Robin Amadei, *Conflict Coaching*, MEDIATE (Mar. 2011), <http://www.mediate.com/articles/AmadeiR1.cfm>.

group be as productive as possible. Acting in such a capacity could be immensely useful to the group, but it will likely foreclose the conflict resolution practitioner from acting in some of the other ally roles identified above because of the real or perceived lack of neutrality of the practitioner.

In addition to these eight roles, there may be other ways in which a conflict resolution practitioner can become more involved as an ally. When deciding whether and how to get involved, one should be mindful of the ways in which action may or may not fit one's own professional and personal interests in addition to the interests of the group one is trying to help.

IV. CONCLUSION

Conflict resolution practitioners can play a role in the pressing community issues of today by serving as allies to various causes. Certainly, we must weigh the risks that this entails, and each person must decide individually how to be involved. That said, the risks should not totally disable us as practitioners from lending our skills in a variety of ways.

Although this is a rough sketch of our ideas, we encourage you to further this conversation and look for ways in which you can serve as an ally. By doing so, we can continue to expand the ways in which we can be the peace builders of our time.

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